



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R10-OAR-2019-0433; FRL-10002-52-Region 10]

#### Outer Continental Shelf Air Regulations; Consistency Update for Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; consistency update.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources subject to requirements of the State of Alaska. The State of Alaska's requirements discussed in this document, and listed in the appendix to the Federal OCS air regulations, are proposed to be incorporated into the compilation of state provisions that is incorporated by reference.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R10-OAR-2019-0433** at <https://www.regulations.gov>, or via email to [greaves.natasha@epa.gov](mailto:greaves.natasha@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Natasha Greaves, (206) 553-7079, or by e-mail at [greaves.natasha@epa.gov](mailto:greaves.natasha@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude. *See* 40 CFR 55.3(a). Section 328 of the CAA requires that for such sources located within 25 miles of a state’s seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the

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<sup>1</sup> The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12, consistency reviews will occur at least annually. Additionally, consistency reviews will occur upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4 and when a State or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This proposed action is being taken in response to the submittal of a NOI on October 1, 2019, by Hilcorp Alaska, LLC. Public comments received within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

## **II. EPA Analysis**

EPA reviewed Alaska's rules for incorporation by reference in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules<sup>2</sup>. EPA has also proposed to exclude those provisions that would not reasonably be expected to apply to an OCS source.

EPA is soliciting public comments on this proposed action, and these comments will be considered before taking final action. Interested parties may participate in this rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

## **III. Proposed Action**

EPA is proposing to incorporate by reference the rules potentially applicable to sources for which the State of Alaska will be the COA. The rules that EPA proposes to incorporate are applicable provisions of Title 18 of the Alaska Administrative Code, specifically, the provisions of Air Quality Control Chapter 50 identified below. The intended effect of proposing approval

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<sup>2</sup> Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

of various Alaska air pollution control requirements for inclusion in the updated compilation of “State of Alaska Requirement Applicable to OCS Sources” dated September 15, 2018, is to regulate emissions from OCS sources in accordance with the requirements for onshore sources.

#### **IV. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference provisions of Chapter 50 of the Alaska Administrative Code set forth below. EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 10 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states’ seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA’s role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule incorporating by reference sections of Title 18 of the Alaska Administrative Code, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060-0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.<sup>3</sup> The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

EPA is proposing to incorporate the rules potentially applicable to sources for which the State of Alaska will be the COA. The rules that EPA proposes to incorporate are the identified

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<sup>3</sup> OMB's approval of the ICR can be viewed at [www.reginfo.gov](http://www.reginfo.gov).

provisions of Title 18 of the Alaska Administrative Code, specifically, Air Quality Control Chapter 50.

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 14, 2019.

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Chris Hladick  
Regional Administrator  
Region 10



Part 55 of Chapter I, title 40 of the Code of Federal Regulations is proposed to be amended follows:

**PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS**

1. The authority citation for part 55 continues to read as follows:

**AUTHORITY:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) and removing and reserving (e)(2)(ii)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States’ seaward boundaries, by State.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) State of Alaska Requirements Applicable to OCS Sources, September 15, 2018.

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3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading “Alaska” to read as follows:

**APPENDIX A TO PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE**

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## ALASKA

(a) \* \* \*

(1) The following State of Alaska requirements are applicable to OCS Sources, September 15, 2018, Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

### **ARTICLE 1. AMBIENT AIR QUALITY MANAGEMENT**

18 AAC 50.005. Purpose and Applicability of Chapter (effective 10/01/2004)

18 AAC 50.010. Ambient Air Quality Standards (effective 08/20/2016)

18 AAC 50.015. Air Quality Designations, Classification, and Control Regions (effective 04/17/2015) except (b)(3) and (d)(2)

Table 1. Air Quality Classifications

18 AAC 50.020. Baseline Dates and Maximum Allowable Increases (effective 08/20/2016)

Table 2. Baseline Areas and Dates

Table 3. Maximum Allowable Increases

18 AAC 50.025. Visibility and Other Special Protection Areas (effective 09/15/2018)

18 AAC 50.030. State Air Quality Control Plan (effective 09/15/2018)

18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 09/15/2018)

18 AAC 50.040. Federal Standards Adopted by Reference (effective 09/15/2018) except (h)(2)

18 AAC 50.045. Prohibitions (effective 10/01/2004)

18 AAC 50.050. Incinerator Emissions Standards (effective 07/25/2008)

Table 4. Particulate Matter Standards for Incinerators

18 AAC 50.055. Industrial Processes and Fuel-Burning Equipment (effective 09/15/2018) except (a)(4) through (a)(6), (a)(9), (b)(2)(A), (b)(3), (b)(5), and (e)

18 AAC 50.065. Open Burning (effective 03/06/2016)

18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 06/21/1998)

18 AAC 50.080. Ice Fog Standards (effective 01/18/1997)

18 AAC 50.085. Volatile Liquid Storage Tank Emission Standards (effective 01/18/1997)

18 AAC 50.100. Nonroad Engines (effective 10/01/2004)

18 AAC 50.110. Air Pollution Prohibited (effective 05/26/1972)

## **ARTICLE 2. PROGRAM ADMINISTRATION**

18 AAC 50.200. Information Requests (effective 10/01/2004)

18 AAC 50.201. Ambient Air Quality Investigation (effective 10/01/2004)

18 AAC 50.205. Certification (effective 10/01/2004) except (b)

18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 09/15/2018)

Table 5. Significant Impact Levels (SILs)

18 AAC 50.220. Enforceable Test Methods (effective 09/15/2018)

18 AAC 50.225 Owner-Requested Limits (effective 09/15/2018) except (c) through (g)

18 AAC 50.230. Preapproved Emission Limits (effective 09/15/2018) except (d)

18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 09/15/2018)

18 AAC 50.240. Excess Emissions (effective 12/29/2016)

18 AAC 50.245. Air Quality Episodes and Advisories for Air Pollution Other Than PM 2.5 (effective 02/28/2015)

Table 6. Concentrations Triggering an Air Quality Episode for Air Pollution Other Than PM 2.5

18 AAC 50.246. Air Quality Episodes and Advisories for PM 2.5 (effective 02/28/2015)

Table 6a. Concentrations Triggering an Air Quality Episode for PM 2.5

### **ARTICLE 3. MAJOR STATIONARY SOURCE PERMITS**

18 AAC 50.302. Construction Permits (effective 09/14/2012)

18 AAC 50.306. Prevention of Significant Deterioration (PSD) Permits (effective 01/04/2013) except (c) and (e)

18 AAC 50.311. Nonattainment Area Major Stationary Source Permits (effective 09/15/2018) except (c)

18 AAC 50.316. Preconstruction Review for Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (effective 12/01/2004)

18 AAC 50.321. Case-By-Case Maximum Achievable Control Technology (effective 10/06/2013)

18 AAC 50.326. Title V Operating Permits (effective 09/15/2018) except (c)(1), (h), (i)(3), (j)(5), (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6)

18 AAC 50.345. Construction, Minor and Operating Permits: Standard Permit Conditions (effective 09/15/2018)

18 AAC 50.346. Construction and Operating Permits: Other Permit Conditions (effective 09/15/2018)

Table 7. Standard Operating Permit Condition

### **ARTICLE 4. USER FEES**

18 AAC 50.400. Permit Administration Fees (effective 09/15/2018) except (a)(2) through (a)(4), (a)(6), (a)(8), (i)(1), (i)(4), (i)(8), and (i)(9)

18 AAC 50.403. Negotiated Service Agreements (effective 09/26/2015)

18 AAC 50.410. Emission Fees (effective 09/15/2018)

18 AAC 50.499. Definition for User Fee Requirements (effective 09/26/2015)

#### **ARTICLE 5. MINOR PERMITS**

18 AAC 50.502. Minor Permits for Air Quality Protection (effective 09/15/2018) except (b)(1) through (b)(3), (b)(5), (d)(1)(A) and (d)(2)(A)

18 AAC 50.508. Minor Permits Requested by the Owner or Operator (effective 12/09/2010)

18 AAC 50.510. Minor Permit—Title V Permit Interface (effective 12/09/2010)

18 AAC 50.540. Minor Permit: Application (effective 09/15/2018)

18 AAC 50.542. Minor Permit: Review and Issuance (effective 09/15/2018) except (a), (b), (c), and (d)

18 AAC 50.544. Minor Permits: Content (effective 12/09/2010)

18 AAC 50.546. Minor Permit Revision (effective 7/25/08)

18 AAC 50.560. General Minor Permits (effective 09/15/2018) except (b)

#### **ARTICLE 9. GENERAL PROVISIONS**

18 AAC 50.990. Definitions (effective 09/15/2018)

(2) [Reserved]

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